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SUPREME COURT OF THE UNITED STATES.

No. 41.

JAMES MOORE, PLAINTIFF IN ERROR,

VERSUS

BANK OF COLUMBIA, USE OF, &c.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR WASHINGTON, D. C.

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UNITED STATES OF AMERICA, ss.

The President of the United States to the Judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between the President, Directors and Company of the Bank of Columbia, for the use of the United States, and the President, Directors and

Campany of the Bank of the United States, plaintiffs, and James Moore defendant, a manifest error hath happened, to the great damage of the said James Moore, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, it judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of August next, in said Supreme Court, to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable John Marshall, Chief Justice of the said Supreme Court.

Issued the 14th day of June, 1830.

WILLIAM BRENT, *Clerk*
Circuit Court D. C. City of Washington.

DISTRICT OF COLUMBIA, COUNTY OF WASHINGTON, sct.

Be it remembered that, on the 14th day of June, in the year eighteen hundred and thirty, James Moore, by Richard Wallach, Esq,. his attorney, filed in court here the following petition, and the order of the Honorable John Marshall thereon, to wit:

To the Chief Justice and Associate Justices of the Supreme Court of the United States, or to any one of them.

The petition of James Moore humbly shews that, in the month of July, 1825, the Bank of Columbia, as suing for the United States, and the Bank of the United States, sued out execution in the nature of what is termed their short process against your petitioner, upon a supposed promissory note, purporting to be dated as far back as April 25, 1816, for the sum of $500, payable 60 days after date to one Gilbert Docker, (now many years deceased,) and to be signed by your petitioner, and endorsed by the payee; which note, upon the failure of the Bank of Columbia, was said to have been turned over, with the mass of its assets, to the Bank of the United States. In fact and in truth, he avers that he never signed, or in any manner authorized the signing of said note, and was entirely ignorant of the existence of any such, till it was, more than nine years after its date, raked out of the stale and long neglected depositories of the Bank of Columbia, by their assignees, and the process aforesaid thereupon issued. On the trial, it was not pretended by the plaintiffs to bear the genuine signature of your petitioner; nor any thing pretended or shewn from the books of the Bank, or otherwise, proving that he had ever received from the Bank of Columbia one cent of the proceeds of said pretended note. The death of the endorser, and the confusion and deficiencies of the papers of the Bank, together with the lapse of time, involved the whole transaction in inexplicable mystery. The whole process of proof by which the plaintiffs undertook to fix upon your petitioner, after the lapse of so many years, responsibility for the said note, was the production of the note itself, and evidence that it was signed in his name by a supposed agent; who, it is true, had many years before been agent of your petitioner in the transaction of his business as a butcher; but who, in truth and in fact, had ceased to be such agent a con-

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siderable time before the date of said pretended note. But as the fact of his continuing agency to a later period, or of the presumption of such continuance in the absence of proof of some determinate revocation, was left by the court to the jury, your petitioner can have no benefit of exception in law to the very slight and doubtful evidence of agency for any purpose capable of binding him by such a note. But he did hope to be protected against this iniquitous claim by the statute of limitations; the term prescribed by which for the institution of this action had been more than trebled, before a single step was taken by demand, or suit, or otherwise, to assert any right of action upon the pretended note; which, in that long interval, was left by the holders, forgotten or neglected, whilst your petitioner was utterly ignorant, not only that any such claim existed against him, but of the existence of the pretended note. He accordingly, by the advice of counsel, put in the plea of that statute, which was found against him pursuant to certain instructions from the court to the jury, which form the ground of a regular bill of exceptions reserved in the cause, as appears by the record annexed. He is advised by his counsel, that the opinion and instructions excepted to lay a proper and just foundation for a review of the judgment in the Supreme Court of the United States; indeed, the circuit court itself appeared, and so expressed itself at the first argument of the motion for a new trial, to be convinced of the error of its first opinion and instruction; but at length, at the last December term of the circuit court for this district and county, with considerable doubt and hesitation, gave judgment against your petitioner. The amount of that judgment, exclusive of costs ($500 with interest from June 1816, to December 1829, or for about 13½ years, $904) falling by a small sum below the limit at which a party may sue out a writ of error as of right, your petitioner is compelled to apply to one of the justices of the Supreme Court for the allowance of such a writ pursuant to the act of Congress in such case provided. Your petitioner is further advised, by counsel every way competent to form a judgment of the general bearing and effect of the principles ruled by the circuit court in their said decision upon the jurisprudence of the district and the interests of the citizens at large, that the bill of exceptions in this case presents a question proper and necessary to be settled by a court in the last resort; especially as it is intimately connected with the principles laid down by the Supreme Court itself, in a class of cases tending to settle the construction of the statute of limitations according to its genuine objects and intents, and to review and reform the principles which had governed the great mass of preceding adjudications on the same statute, and which had gone the length of nearly operating a repeal in practice of its enactments. In order to complete the system of reform, so auspiciously begun and advanced by the Supreme Court, and by other tribunals of high authority, both in this country and in England, your petitioner conceives, and is so advised by impartial counsel, that it is highly necessary to have the decision in question reviewed by the Supreme Court upon a writ of error. That decision is conceived to have carried the principle of latitudinary construction, in derogation of the plain enactments and genuine objects and intents of the statute, to as great a length as most, if not any, of the most exceptionable adjudications that have been repudiated in modern jurisprudence by the Supreme Court and other high tribunals; and to be inconsistent with the obvious spirit and principles, if not with the express terms, of adjudications of the Supreme Court. Upon reference to the bill of exceptions, it will appear that the pretended acknowledgment, which was

held sufficient to repel the bar of the statute, was not drawn from the defendant by any demand or application whatever, on the part of the holders, or any other person, for payment of the note in question; no evidence appears that it was ever presented to, or even mentioned to him, prior to the institution of the short process in July, 1825, more than nine years after the pretended note is supposed to have fallen due; or that he ever before knew of the existence or claim for such a note. What is construed into an acknowledgment of this *particular note*, are some vague and casual expressions said to have dropped from him at a frolic with some of his companions in the public bar-room of a tavern, and said to have been *overheard* by a casual bystander, (the only witness in the case,) who happened to be in the room *reading the newspapers*, and in no way connected with or joining in the party with which the defendant was enjoying an hour of hilarity; and who (the said witness) took no part in the conversation; made no comment upon, nor asked nor received any explanation of, the vague words he pretends to have heard uttered by the defendant. This is said, by the witness, to have happened in the summer of 1823, seven years after the note is supposed to have fallen due, and two years before the institution of the suit; and yet was never followed up by any application to the defendant for the payment of the note from the time of the pretended conversation at the tavern to the time of bringing the suit. The plaintiffs, it is true, do pretend, from the document filed in July, 1825, as the ground of the short process, to have sent a written demand on the 22d June 1819, for this note; and to have served the same upon James Moore, jr., (the same *person who was proved on the trial to have signed the note in April*, 1816, and who the plaintiffs pretend was at that time agent of defendant,) but who was not proved or pretended to have been either defendant's agent or a member of his family in 1819, when this demand is pretended to have been served. In fact and in truth, the defendant never heard of the said written demand till it was filed in court; and he is advised that the paper filed by the plaintiffs is no evidence whatever, nor was it attempted to be used as evidence in the *trial*, that any such demand was ever made or served, even in the exceptionable form of a service upon James Moore, jr.; certain it is, that the plaintiffs never received or pretended to have received any answer to it from the defendant or in his behalf, and suffered the pretended claim to rest in oblivion more than six years after this pretended demand before they commenced suit. Such are the *circumstances*, precedent, contemporary, and subsequent to the alleged conversation, in which the pretended acknowledgment is said to have been made. But, when the terms of that acknowledgment come to be carefully considered, its futility and utter inconsequence, as to the specific demand on the note in question, will be more apparent. In the conversation between the defendant and his boon companions, which the witness pretends to have *overheard* at the tavern, the witness is said to have been *bantered* by his companions "about his *independent circumstances*, and his being so clear of *debt*, or of the Banks;" upon which, he is represented as jumping up and *dancing* about the room, and exclaiming, "Yes, except one *damned five hundred* in the Bank of Columbia." Now, here it is to be remarked, in the first place, that this, upon their own shewing was a mere *bantering* and jocular conversation, and conducted with the utmost levity; the defendant is even represented as being even *elevated* with drink; strange circumstances, and a stranger manner, it must be confessed, from which to infer the solemn act of making a contract to pay the note in ques-

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tion; and the adjudications of the Supreme Court do expressly require that the acknowledgment or promise must amount to a deliberate *contract* to pay the *specific debt* in question. But let the words themselves be considered, and see what reference any fair construction of them can have to this particular note, or to an admission of its being *due*, and constituting a *debt* to the Bank of Columbia. "One damned *five hundred* in the Bank of Columbia." Five hundred what? The plaintiffs say *dollars* are to be understood. If that were so, what 500 dollars is meant or alluded to? No reference is made to *this* or to any *other note*. This is left to all the vagueness of proof, *aliunde*, and opens the door to all the perjuries and mistakes in evidence, arising from lapse of time and the loss of documents, which constituted the great mischief which the statute was intended to remedy. The Supreme Court has expressly ruled, that the acknowledgment must be so unambiguous and precise in its terms, as to dispense with all evidence, *aliunde*, of the *specific nature* and *amount* of the debt. These must not be left to the uncertainties of collateral evidence, otherwise the statute would be no protection; for then the question of debt, or no debt, would not depend upon a voluntary admission, or promise of the party, but upon original and long dormant proofs, which the party may have been deprived of the opportunity to meet and explain, by loss of evidence from lapse of time. (See Bell *vs.* Morrison's ex'rs., 1 Pet.)

Here the plaintiffs, deserting the terms of the acknowledgment, are obliged to resort to a complicated train of collateral and circumstantial evidence and of inference, before they can specify either the origin, the nature, or the amount of the debt supposed to be referred to in the vague terms of the acknowledgment. At last, in picking and choosing among their moth-eaten repository of stale and forgotten notes, that had been discounted in the Bank some nine years before, they light upon this note; the only and very remote analogy which it bears to the terms of what is set up as an acknowledgment, is, that it happens to be a note for $500, and he said something about a "damned five hundred in the Bank of Columbia." The identity of this note as the thing referred to, is supposed to be established by two facts. 1st. The witness "*knows* of *no other* five hundred hundred dollar note of the defendant in that Bank, but what is paid." Then it is to be inferred that there may have been other notes of his, to a greater or less amount than $500, unpaid, or claimed by the Bank as unpaid. On some of these there may have been a balance claimed, and possibly *disputed*, of $500. Besides, it is entirely vague and uncertain, whether defendant referred to a *note* at all, or to some other transaction in the Bank, or, if to a *note*, whether to one of his own, that is, whereof he was *drawer*, or to one whereon he was *endorser;* all or any of these hypotheses are equally probable. The evidence merely extends to what the witness happens to know. He pretends not to know the negative, or to assert the negative, that there was not in fact some other 500 dollar note in the Bank, even of the defendant's own drawing, but only that he has no knowledge of such. This evidence is perfectly consistent with the fact, not only that there may have existed a note to the precise amount of $500, or having an unsettled balance of $500, of which the defendant was drawer, or that he may have been held liable as endorser or otherwise to that amount, but that the witness *knew* of some claim of one or other of the two latter descriptions. All that the witness disclaims is his personal knowledge of any unpaid note, of the defendant's own drawing, to the precise amount of $500. His means and opportunities of being able to

prove a negative, the extent of his knowledge as to the transactions between the defendant and the Bank, are not stated. Numerous transactions, in the course of nine years, may have taken place without the knowledge of the witness; though he had been some time before the conversation a *clerk* in the Bank, and some time afterwards returned to that situation. At any rate, he could have known nothing of such transactions as arose in the interval, when he was not acting as clerk to the Bank, but was lingering in the prison bounds of Washington. 2d. The second, and only other fact relied on to connect the conversation with the particular note in question is, that, "upon examination of the *books of the Bank*, no other *discounted note* of the defendant (that is, *drawn* by defendant) *stood charged* to him at the time of the conversation." Now, it is notorious that discounting Banks open discount accounts only with the *drawers* of notes discounted for the drawers. In those accounts, notes even *discounted* are not charged to the endorsers. Suppose then that the plaintiffs could use their own books as evidence in their favor, to prove either an affirmative or a negative; and that we are to conclude that the books of the Bank of Columbia were the most celebrated for accuracy and system; still the defendant might have been involved in some transaction *with* or *in* the Bank, that did not, and, in the ordinary state of Bank accounts, could not *stand charged* on their discount leger. The conversation specifies no description of debt or claim involving $500. It may have been connected, or not at all connected with a note to that or any other *amount;* it may not have had reference to any *note transaction* whatever; if to any note, it is perfectly uncertain whether to a note of his own, or to one whereon he was endorser; whether to one *discounted* by the Bank, or to one that came to their hands in any other way; whether to a note due to the Bank itself, or to one held there for collection: in short, there is no end to the various transactions to which this vague expression of "five hundred in the Bank of Columbia," might have referred, and which could not appear on the discount leger of the Bank, and which are not disproved, nor even the knowledge of such disavowed by the witness, whose parol testimony is relied on. The negative evidence of the witness only excludes from his knowledge two descriptions of notes: first, 500 dollar notes; 2d, notes charged on the *discount leger* of any amount. This may admit a knowledge of any number of notes not discounted, for any amount above or below 500 dollars; and of any number of *discounted* notes whereon he was held liable as *endorser*. Thus is introduced all the diversity and uncertainty of original evidence, as to stale transactions, presenting in the strongest form all the mischiefs intended to be remedied by the statute. But this is not all. There is no construction that can be put upon the words, imputed to the defendant by the witness, Mr. Rind, that acknowledges a subsisting *debt* and obligation to pay it, even if the plaintiffs had succeeded (as they have not) in identifying this particular note with the transaction referred to by the defendant, when he is said to have used those words. When the several decisions of the Supreme Court in Clementson against Williams, Wetzell against Bussard, and Bell against Morrison's executors, are examined, it will be found clearly established that a promise or acknowledgment, to repel the bar of the statute, must positively import an ascertained debt, subsisting at the time of the promise or acknowledgment; a *present* and unequivocal *obligation* to pay an *ascertained debt*. It must not leave the parties to litigation upon original evidence, either to ascertain the amount of the debt, or its nature, or to deter-

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mine whether it be due or not; all which must be ascertained by the *terms* of the promise or acknowledgment itself. Sufficient has been said to shew how vague and uncertain are the terms of the pretended acknowledgment in this case; leaving it wholly unascertained, and depending upon the *original* evidence solely of a stale transaction, to determine what the party meant, what was the particular transaction alluded to, &c. &c. But suppose it ascertained with certainty and precision that this identical note was the transaction alluded to, did he acknowledge it to be actually *due*, did his words, unequivocal or otherwise, import a present and subsisting obligation to pay it?

The witness, as will be seen from the bill of exceptions, is altogether uncertain whether the defendant was *bantered* by his companions about being "clear of *debt*," or "clear of *Banks*." Suppose it had been the latter, and the defendant, in the levity of the moment, had answered "yes [I am *clear* of the *Banks*,] except one *damned* five hundred in the Bank of Columbia, which I can pay at any time." This would only have imported that he had an entanglement with the Bank of Columbia, that formed the only exception to his general *clearness* of *Banks;* but would it have been an unequivocal admission that the amount of $500 was then *due*, and constituted a subsisting debt? Surely not. It could only have proved that the Bank *held* and *claimed* a debt to such an amount against him; but that it was *justly* claimed of him, and he *bound* to pay it, is not admitted. He might truly have said he was not *clear* of the Bank of Columbia, though he *disputed* the claim, or his obligation to pay it, to the utmost, if the Bank still held the claim against him ever so unjustly and illegally. He might have felt the utmost confidence in defeating the claim upon its *merits*, (as in fact he did dispute it when the claim was afterwards advanced against him,) and yet so long as it was held over his head, he might truly say he was not clear of that Bank. He merely asserts his *ability*, not his willingness or any obligation, to pay it; any supposition of a new *contract* or promise to pay it would, under the circumstances stated, be absurd. He was merely vaporing (according to the plaintiffs' own statement,) among his companions, about the independence of his circumstances; what he is represented to have said was no answer to any application for payment, nor said to, or in presence of, any person authorized to make any demand on him, or to enter into any sort of arrangement with him respecting the claim. A man, speaking of what he may consider the most unjust claim imaginable may assert his ability to pay it (meaning if it should be established against him,) without the slightest admission of its justice. Here his assertion, "I can pay it at any time," taken in connexion with the previous conversation, has the most clear and direct reference to the independence of his circumstances; and, of course, to his mere *ability* to pay so much with facility. The epithet "damned five hundred," which is imputed to him by the witness, certainly leads to no conclusion of an indisputed or admitted claim or debt; and, as the evidence of the plaintiffs themselves shews him to have been a man of such independent circumstances, and clear of pecuniary embarrassments, it is, by their own shewing, to the highest degree probable that it must have been at least a *disputed* claim, since it was held up nine years; and the plaintiffs, or rather their *assignees*, have to resort to this vague ackowledgment, as it is called, and do not bring suit till more than *two years* even after they are in possession of that acknowledgment.

Your petitioner, therefore, confidently hopes that his case presents just and sufficient ground for a deliberate review of the decision of the circuit court in the Supreme Court; and humbly prays the allowance of a writ of error to

remove the cause into the Supreme Court of the United States, pursuant to the act of Congress in such case provided.

JAMES MOORE.

The writ of error is awarded, the party giving bond with surety in the penalty of two thousand dollars.

J. MARSHALL,
Chief Justice of the United States.

June 7th, 1830.

And on the said 14th day of June, eighteen hundred and thirty, the said James Moore filed here the following approved appeal bond, to wit:

Know all men by these presents, that we, James Moore, Ezekiel McDaniel, and Vincent Masi, of the county of Washington, in the District of Columbia, are held and firmly bound unto the President, Directors and Company of the Bank of Columbia, in the full and just sum of two thousand dollars, current money, to be paid to the said President, Directors and Company of of the Bank of Columbia, or their certain attorney or assigns, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this fourteenth day of June, the year eighteen hundred and thirty.

Whereas, lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit depending in the said circuit court, wherein the said President, Directors and Company of the Bank of Columbia, for the use of the United States, and of the President, Directors and Company of the Bank of the United States, were plaintiffs, and the said James Moore was defendant, judgment was rendered against the said James Moore; and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said President, Directors and Company of the Bank of Columbia, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of August next—

Now the condition of the above obligation is such, that, if the said James Moore shall prosecute his said writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JAMES MOORE, [SEAL.]
EZL. MACDANIEL, [SEAL.]
VINCENT MASI. [SEAL.]

Signed, sealed, and delivered in the presence of,
PHILIP H. MASI.

Approved:

W. CRANCH.

Thereupon the writ of error issued, which is hereto annexed, directed to the Judges of the circuit court of the District of Columbia for the county of Washington.

And, in pursuance thereof, a record of the proceedings had in the said court, in the said cause of the President, Directors and Company of the Bank of Columbia, use of the United States, and of the President, Directors and Company of the Bank of the United States, against James Moore, is now accordingly transmitted to the said Supreme Court, and is in the words and figures following, to wit:

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DISTRICT OF COLUMBIA, sct.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of December, being the seventh day of the same month, in the year of our Lord one thousand eight hundred and twenty nine, and of the independence of the United States the fifty-fourth, were present,

The Hon. { WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, and JAMES S. MORSELL, } *Asst. Judges.*
TENCH RINGGOLD, Esq., *Marshal.*
WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, amongst others, are the following, to wit:

President, Directors and Company of the Bank of Columbia, use of the United States, and the Bank of the United States, against James Moore.

Be it remembered, that heretofore, to wit, on the fourteenth day of July, in the year eighteen hundred and twenty-five, Nathaniel Frye, jr., esquire, President of the Bank of Columbia, filed in the court here the following order, with the accompanying papers, to wit:

BANK OF COLUMBIA, *July 7th*, 1825.

To William Brent, Esq., clerk of the circuit court of the District of Columbia for the county of Washington.

SIR: Upon the receipt of this, with the enclosed note and affidavits, you are requested to issue a writ of fieri facias against James Moore in the name of the President, Directors and Company of the Bank of Columbia, for the sum of seven hundred and seventy-two dollars and fifty-two cents, money of the United States, and the cost of the writ you shall issue, pursuant to the directions of the act of assembly of the state of Marylaud, entitled "an act to establish a Bank in the District of Columbia," which said act of the State of Maryland has been adopted by the Congress of the United States, for Washington county, in the District of Columbia, and this shall be your sufficient warrant.

NATHANIEL FRYE, Jr.,
President of the Bank of Columbia.

WASHINGTON, *April 25th*, 1816.

$500.

Sixty days after date, I promise to pay Gilbert Docker, or order, five hundred dollars for value received, negotiable and payable at the Bank of Columbia.

JAMES MOORE.

Credit the drawer. G. D.

(Endorsed.)

Pay the contents of the within note to the President, Directors and Company of the Bank of Columbia, or order; value received.

GILBERT DOCKER.

DISTRICT OF COLUMBIA, WASHINGTON COUNTY, to wit:

On this seventh day of July, one thousand eight hundred and twenty five, came Nathaniel Frye, jr., President of the Bank of Columbia, before me the subscriber, a justice of the peace in and for the county aforesaid, and made oath that there is due to the President, Directors and Company of the Bank of Columbia, on the note hereunto annexed, the sum of seven hundred and seventy-two dollars and fifty-two cents, money of the United States, for principal, interest, and cost of protest up to this day; and that the said note was neglected to be paid by the parties thereto when it became due, to the best of his knowledge and belief.

WALTER NEWTON.

WASHINGTON CITY, *April* 25, 1816.

$500.

Sixty days after date, I promise to pay Gilbert Docker, or order, five hundred dollars for value received, negotiable at the Bank of Columbia.

JAMES MOORE.

Credit the drawer. G. D.

(Endorsed as follows.)

Pay the contents of the within note to the President, Directors and Company of the Bank of Columbia, or order, value received.

GILBERT DOCKER.

Protest $1 70 cts.

BANK OF COLUMBIA, *June* 22, 1819.

The above is a true copy of an original note in the possession of the President, Directors and Company of the Bank of Columbia, and now due and owing to them by you, as drawer thereof: you are therefore demanded and required to pay the amount of principal, interest, and cost of protest, to the said President, Directors and Company of the Bank of Columbia immediately.

J. MASON,
President of the Bank of Columbia.

Mr. JAMES MOORE.

Original delivered to Mr. Moore, jr., in the city of Washington, June 22, 1819.

W. BROWNE.

DISTRICT OF COLUMBIA, WASHINGTON COUNTY, sct.

Be it remembered that, on this 25th day of June, 1825, William Browne made oath that, on the 22d June, 1819, he called at the dwelling house and last place of abode of James Moore, and he not being at home, and not being found, left the original notice and demand whereof the within is a true copy, with Mr. Moore, jr., at the last place of abode of said James Moore, to the best of his knowledge and belief.

Sworn before JAMES ORR, *J. P.*

Upon which order and the accompanying papers the United States writ of fieri facias issued, directed to the Marshal of the District of Columbia, in the words and of the tenor following, to wit:

DISTRICT OF COLUMBIA, to wit. 337.

The United States of America to the Marshal of the District of Columbia, greeting:

Whereas in virtue of an act of the General Assembly of Maryland, passed at November session, in the year of our Lord one thousand seven hundred and ninety-three, entitled "An act to establish a Bank in the District of Columbia," Nathaniel Frye, jr., Esquire, President of the said Bank of Columbia, hath this day, that is to say, the fourteenth day of July, in the year of our Lord eighteen hundred and twenty-five, filed in the circuit court of the District of Columbia, for the county of Washington, a certain note, commonly called a promissory note, drawn and signed by a certain James Moore, and dated at Washington city, on the 25th day of April, in year eighteen hundred and sixteen, whereby, sixty days after the date thereof, the said James Moore promises to pay a certain Gilbert Docker, or order, five hundred dollars for value received, negotiable at the Bank of Columbia, which said note was endorsed and signed by the said Gilbert Docker, Pay the contents of the within note to the President, Directors and Company of the Bank of Columbia, for value received; upon which said note so endorsed, the said President of the said Bank hath ordered and directed the clerk of the said circuit court for the county aforesaid to issue a writ of fieri facias against the said James Moore, in the name of the President, Directors and Company of the Bank of Columbia, for the sum of seven hundred and seventy-two dollars and fifty-two cents, (money of the United States,) being the value of the sum actually and bona fide due and owing upon the said note, and also the costs of the said writ of fieri facias; and, in pursuance of the provisions of the said act of assembly, the said President hath caused demand in writing to be made on the twenty-second day of June, 1819, on the said drawer of the said note, he having neglected or refused to pay the same at the time it became due, and having signed as aforesaid an express consent in writing that the said note might be made negotiable at the Bank of Columbia; and the money so due on the said note not being paid within ten days after the said demand, and the same being still unpaid, the affidavit of William Browne proving said demand being also here filed, and the said President having ordered as aforesaid execution of fieri facias to issue thereon as aforesaid, and having made an oath, as required by said act, ascertaining that there is due on the said note to the said Bank the sum of seven hundred and seventy-two dollars and fifty two cents (money of the United States,) for principal, interest, and costs of protest, up to the seventh day of July, instant, the date of said oath, which said oath is also here filed in the office of said clerk; all which appears by the proofs annexed to, and here filed with the said note, by which it appears that the requisites of the said act of assembly have been fully complied with.

Therefore, you are hereby commanded that, of the goods and chattels, lands and tenements of the said James Moore, being in the county of Washington, in the district aforesaid, you cause to be made and levied the sum of seven hudred and seventy-two dollars and fifty-two cents so as aforesaid due and owing, and also the sum of six dollars and thirty-five cents, being the cost of this writ: and that you have those sums before the said circuit court to be held at the city of Washington, on the third Monday of December next, to render unto the said President, Directors and Company the said sum of money and costs. Hereof fail not at your peril, and have you

then and there this writ. Witness William Cranch, esquire, chief Judge of our said court, at the city of Washington, the 9th day of June, anno Domini one thousand eight hundred and twenty-five.

Issued the 14th day of July, 1825.

WM. BRENT, *Clerk.*

At which third Monday of December, in the year eighteen hundred and twenty-five, being the day of the return of the writ of fieri facias aforesaid, come into the circuit court here the said President, Directors and Company of the Bank of Columbia, by Francis S. Key, esquire, their attorney; and the Marshal of the district aforesaid, to whom the said writ in form aforesaid was directed, makes return thereof to the court here thus endorsed, to wit: "That, in pursuance of the command contained in the within writ, he levied on ten vats, containing eighteen hides each, the goods and chattels of the said James Moore;" and the said James Moore appears in court here by Richard Wallach, esq., his attorney; and the said James Moore, by his attorney aforesaid, alleged that he has good and legal defence to plead in bar of the claim of the said President, Directors and Company of the Bank of Columbia; it is ordered by the court, on the motion of the said James Moore, that the said cause be placed on the trial docket, and that an issue be made up by the first Monday of May next, and said day is given to said parties then, &c.

At which said first Monday of May, in the year eighteen hundred and twenty six, come again into the circuit court here as well the said President, Directors and Company of the Bank of Columbia, by their attorney aforesaid, as the said James Moore, by his attorney aforesaid. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, was regularly continued from term to term until the first Monday of May, in the year eighteen hundred and twenty-eight.

At which said first Monday of May, in the year eighteen hundred and twenty-eight, come again into the circuit court here as well the said President, Directors and Company of the Bank of Columbia, by their attorney aforesaid, as the said James Moore, by his attorney aforesaid; and the said President, Directors and Company of the Bank of Columbia, by their attorney aforesaid, declares against the said James Moore in the action aforesaid, in form following, to wit:

DISTRICT OF COLUMBIA, WASHINGTON COUNTY, to wit:—*President, Directors and Company of the Bank of Columbia vs. James Moore.*

The plaintiffs, by F. S. Key, their attorney, complain, that whereas, heretofore, to wit, on the twenty-fifth day of April, in the year eighteen hundred and sixteen, at the county aforesaid, the said defendant made his certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay to a certain Gilbert Docker, or his order, the sum of five hundred dollars for value received, and then and there delivered the said note to the said Docker, and the said Docker then and there endorsed and delivered the said note to the said plaintiffs.

By means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiffs the said sum of money in the said note specified, and being so liable the said defendant, in consideration thereof, afterwards, to wit, on the

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day and year last aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay the said sum of money in the said note specified.

Yet the said defendant the said sum of money herein mentioned, or any part thereof, (although often thereto requested, to wit, on the day and year last aforesaid, and often afterwards,) hath not paid, but the same, or any part thereof, to pay has hitherto wholly refused, and still refuses, to the damage of the said plaintiffs in the sum of five thousand dollars; and therefore they bring suit, and so forth.

F. S. KEY, *for plaintiffs.*

JOHN DOE, } *Pledges, &c.*
RICHARD ROE, }

And the said James Moore, by his attorney aforesaid, comes and defends the wrong and injury when, and so forth, and says, that he did not undertake and promise in manner and form as the said plaintiffs have above complained, and of this he puts himself upon the country.

And for further plea in this behalf, the said defendant, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, comes and further defends the wrong and injury when, &c., and says, that the said plaintiffs ought not to have or maintain their action aforesaid against him, the said defendant, because, he says, that he, the said defendant, did not, at any time within three years next before the commencement of this suit, undertake and promise in manner or form as the said plaintiffs have above complained. And this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their action aforesaid against him, &c.

And for further plea in this behalf, the said defendant, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, comes and further defends the wrong and injury when, &c., and says, that the said plaintiffs ought not to have or maintain their action aforesaid against him, the said defendant, because, he says, that the said supposed cause of action in the said declaration mentioned did not accrue to the said plaintiffs within three years next before the commencement of this suit. And this the said defendant is ready to verify: wherefore he prays judgment if the said plaintiffs ought to have or maintain their action aforesaid against him, &c.

And the said President, Directors and Company of the Bank of Columbia, by their attorney aforesaid, as to the said plea of the said defendant by him first above pleaded, whereof he puts himself upon the country, do the like, &c.

And as to the said plea of the said defendant, by him secondly above pleaded, the said plaintiffs say that they, by any thing in that plea above alleged, ought not to be precluded from having their action aforesaid against him, the said defendant, because, they say, that the said defendant, within three years next before the commencement of this suit, did assume upon himself in manner and form as the said plaintiffs above against him have complained; and this they pray may be inquired of by the country, and the said defendant in like manner, &c.

And as to the said plea of the said defendant, by him thirdly and lastly above pleaded, the said plaintiffs say, they ought not to be precluded from having and maintaining their action aforesaid against him the said defendant, because, they say, that the cause of action in the said declaration men-

tioned did accrue within three years next before the commencement of this suit, in manner and form as the said plaintiffs have above complained against him, and this they pray may be inquired of by the country, and the said defendant in like manner, &c. Therefore let a jury thereon appear before the court here forthwith, by whom, &c., and who neither, &c., because as well, &c. Whereupon, for trying the issue aforesaid, it is ordered by the court here, that twelve persons from the pannel of petit jurors returned to the court here by the marshal of the district aforesaid, be drawn by ballot, and the twelve persons so drawn, being called, come; who, being empannelled, and sworn to say the truth in the premises, upon their oath do say, as to the first issue between the parties aforesaid within joined, that the said James Moore did not assume upon himself in manner and form as the said President, Directors and Company above against him have complained, as the said James Moore in pleading hath alleged; and, as to the second issue between the parties aforesaid within joined, the jurors aforesaid, on their oath aforesaid, do further say, that the said James Moore, within three years next before the commencement of this suit, did not assume upon himself in manner and form as the said James Moore in his second plea hath alleged; and as to the third issue between the parties aforesaid within joined, the jurors aforesaid, on their oath aforesaid, do further say, that the said cause of action in the said declaration mentioned did not accrue to the said President, Directors and Company at any time within three years next before the commencement of this suit, in manner and form as the said James Moore, in his third plea, hath alleged. Whereupon the said James Moore, by his attorney aforesaid, prays judgment against the said President, Directors and Company of the Bank of Columbia, of and upon the verdict aforesaid, given in form aforesaid; and the said President, Directors and Company, by their attorney aforesaid, say, that the court here ought not to proceed to render judgment upon the said verdict, and pray that judgment against them of and upon the said verdict by the jurors aforesaid, in form aforesaid given, may be staid for the reasons contained in the following affidavit, viz:

Samuel H. Smith, the President of the office of discount and deposite, at Washington of the Bank of the United States, makes oath that, in the above suit of the Bank of Columbia, use of the Bank of the United States, he has just discovered that William A. Rind, who was not examined at the trial of the said cause, can testify, in case a new trial thereof should be granted, that he heard James Moore, the defendant, say, sometime in the month of June or July, 1823, that "he did not owe a dollar to any Bank in the district, excepting a damn'd five hundred dollar note in the Bank of Columbia, which he could pay at any time," and this deponent verily believes that he can also prove by the said Rind, that the note on which this said suit was brought is the five hundred dollar note alluded to by the said Moore, and he is advised by the attorney employed for the said Bank in the said suit, that, in case a new trial of the said cause should be granted, he has no doubt of the aforesaid evidence of the said Rind being decisive of the cause in favor of the said plaintiffs. He is told by the said attorney, and he verily believes, that the said plaintiffs would have gained a verdict at the trial of the said cause at the present term of the court, if they had had evidence sufficient to bar the plea of the statute of limitations, which was pleaded by the said defendant, and that, if they had been apprised of the existence of this evidence of the said Rind, they would have used their best endeavors to have

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obtained it, and would no doubt have obtained it, and offered it at the trial. This deponent further makes oath, that he verily believes the said evidence of the said Rind can be procured and produced at a new trial of the said cause, if one should be granted, and that it will be in substance and effect such as is mentioned above. This deponent further makes oath, that he was ignorant of the existence of such evidence until the second instant; and he is assured by the aforesaid attorney of the Bank, and he verily believes, that he was also ignorant of its existence, until after the trial of the said cause, and it was too late for the said plaintiffs to avail themselves of it.

Sworn to in open court, June 3d, 1828.

WM. BRENT, *Clerk.*

Whereupon, all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, for that it appears to the court here that the verdict aforesaid be staid and held entirely as void, and of no force or effect, and that the issue aforesaid be tried anew by other jurors, to be afresh empannelled. It is therefore considered by the court here, that the said James Moore recover against the said President, Directors and Company of the Bank of Columbia the sum of eleven dollars and nine cents for his costs and charges by him expended by occasion of the premises, and new trial aforesaid; therefore let a new jury thereupon appear before the court here on the first Monday of December next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; the same day is given to the said parties then and there, and so forth.

At which said first Monday of December, in the year eighteen hundred and twenty-eight, come again into the circuit court here as well the said President, Directors and Company of the Bank of Columbia, by their attorney aforesaid, as the said James Moore, by his attorney aforesaid; whereupon, for trying anew the issue aforesaid, it is ordered by the court here that twelve persons be drawn by ballot from the pannel of petit jurors returned to the court here by the marshal of the district aforesaid; and the twelve persons so drawn, being called, come; who, being empannelled and sworn to say the truth in the premises, upon their oath do say, as to the first issue between the parties aforesaid within joined, that the said James Moore did assume upon himself in manner and form as the said President, Directors and Company above against him have complained; and, as to the second issue between the parties aforesaid within joined, the jurors aforesaid, on their oath aforesaid, do further say, that the said James Moore, within three years next before the commencement of this suit, did assume upon himself in manner and form as the said President, Directors and Company within, by replying, have alleged; and as to the third issue between the parties aforesaid within joined, the jurors aforesaid, on their oath aforesaid, do further say, that the said cause of action in the said declaration mentioned did accrue to the said President, Directors and Company within three years next before the commencement of this suit in manner and form as the said President, Directors and Company within, by replying, have alleged; and they assess the damages of the said President, Directors and Company, sustained by reason of the nonperformance of the promises and assumptions aforesaid, to the sum of five hundred dollars current money, with interest from the 27th day of June, 1816. Whereupon, the said President, Directors and Company, by their attorney aforesaid, pray judgment against the said James Moore of and upon the verdict aforesaid, by the jurors aforesaid, in

form aforesaid given; and the said James Moore, by his attorney aforesaid, saith, that the court here ought not to proceed to render judgment upon the said verdict, and prays that judgment against him of and upon the said verdict may be staid, and that the issue aforesaid may be tried anew by other jurors to be afresh empannelled; and files in court here the following reasons, viz:

1st. Because the court admitted incompetent testimony.

2d. Because the court refused to instruct the jury that the evidence given by William A. Rind did not import such an acknowledgment of the debt in question in this cause, as was sufficient to take it out of the statute of limitations.

And because the court here are not advised of giving their judgment of and upon the premises, therefore day thereof is given as well to the said President, Directors and Company, as to the said James Moore, before the court here, until the first Monday of December next, to hear their judgment of and upon the premises, for that the court now here are not yet, &c.

At which said first Monday of December, in the year eighteen hundred and twenty-nine, come again into the circuit court here as well the said President, Directors and Company, by their attorney aforesaid, as the said James Moore, by his attorney aforesaid; whereupon, all and singular the premises being seen, and by the court here more fully understood, and mature deliberation being thereupon had, for that it appears to the court here that the said verdict is in no wise insufficient or erroneous, and that the same ought not to be set aside, and that no new trial ought to be had of the issue aforesaid: Therefore, it is considered by the court here that the aforesaid President, Directors and Company of the Bank of Columbia recover against the said James Moore as well the sum of five hundred dollars current money, with interest from the 27th day of June, 1816, the damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, to be sustained by occasion of the nonperformance of the promises and assumptions aforesaid, as also the sum of sixteen dollars and seventy-one cents, by the court here unto the said President, Directors and Company, on their assent, adjudged, for their costs and charges by them about their suit in this behalf laid out and expended, and the said James Moore in mercy, &c.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, at May term, eighteen hundred and twenty-nine, the said James Moore, by his attorney aforesaid, filed in court here the following bill of exception, to wit:

Test: WM. BRENT, *Clerk.*

The plaintiffs, to support the issue aforesaid on their part above joined, produced and read in evideuce to the jury the note and endorsement in the declaration mentioned, being the only cause of action produced or shewn in this cause; which note and endorsement are in these words, to wit:

WASHINGTON CITY, *April 25*, 1816.

$500.

Sixty days after date, I promise to pay Gilbert Docker, or order, five hundred dollars for value received, negotiable at the Bank of Columbia.

JAMES MOORE.

Credit the drawer. G. D.

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(Endorsed.)

Pay the contents of the within note to the President, Directors and Company of the Bank of Columbia, or order; value received.

GILBERT DOCKER.

The plaintiffs, in order to prove an acknowledgment of the defendant within three years next before the commencement of this suit, so as to take the case, or the said note, out of the statute of limitations, produced William A. Rind, who testified that, in the summer of 1823, he went into a tavern to read the newspapers, where he saw in the public room the defendant and two companions drinking, the defendant appearing to be elevated with what he had drank; after the witness came into the room, and while setting there looking at the newspapers, he overheard a conversation between the defendant and his two companions, in which they were bantering him about his independent circumstances and his being so clear of debt, or of the Banks; when the defendant jumped up and danced about the room, exclaiming "Yes, except one damned five hundred in the Bank of Columbia; which I can pay at any time." No part of this conversation was addressed to the witness, nor did he take any part in it. The witness had been for some time clerk in the Bank of Columbia, in Georgetown, but was then in the prison bounds in the city of Washington, and, after his discharge from the prison bounds, immediately returned to the Bank in Georgetown; he believes the defendant, at the time of the above conversation, knew him to be a clerk of the Bank of Columbia; and the defendant, at the time he used the expressions above mentioned, turned round and looked at the witness; the witness, at the time, knew that the note in question was lying over in Bank, and knows of no other five hundred dollar note of the defendant in that Bank, but what is paid. The plaintiffs further proved, that, upon examination of their books, no other *discounted* note of the defendant stood charged to the defendant at the time of the said conversation.

Whereupon the counsel for the defendant prayed the court to instruct the jury, that the evidence aforesaid did not import such an acknowledgment of the debt in question, as was sufficient to take it out of the statute of limitations. Which instruction the court refused, and permitted the said evidence to go to the jury as evidence of an acknowledgment to repel the bar of the statute. To which decision the defendant excepts, &c.

B. THRUSTION, [SEAL.]
JAMES S. MORSELL. [SEAL.]

The writ of error is awarded, the party giving bond with surety in the penalty of two thousand dollars.

J. MARSHALL,
Chief Justice of the United States.

June 7th, 1830.

DISTRICT OF COLUMBIA, COUNTY OF WASHINGTON, to wit:

I, William Brent, clerk of the circuit court of the District of Columbia for the county of Washington, hereby certify that the foregoing is a full, true, and perfect transcript of the proceedings had in the said court in the said case of the President, Directors and Company of the Bank of Columbia, use of the Bank of the United States, &c., against James Moore, taken from the records of said court.